

CASE NO. PD-0322-21

TO THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF TEXAS

FILED  
COURT OF CRIMINAL APPEALS  
6/16/2021  
DEANA WILLIAMSON, CLERK

SAMUEL CRAWFORD PATTERSON,

Appellant

v.

THE STATE OF TEXAS,

Appellee

Appeal from Brazos County, Trial Cause Number 17-00251-CRF-361  
No. 10-19-00243-CR

\* \* \* \* \*

**STATE'S RESPONSE  
TO APPELLANT'S REPLY TO PETITION FOR DISCRETIONARY  
REVIEW**

\* \* \* \* \*

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**ORAL ARGUMENT REQUESTED**

## **IDENTITY OF JUDGE, PARTIES, AND COUNSEL**

\* The parties to the trial court's judgment are the State of Texas and Appellant, Samuel Patterson.

\* The trial judge was Hon. Steve Smith, Presiding Judge of the 361<sup>st</sup> Judicial District Court of Brazos County, Texas.

\* Counsel for Appellant at both trial and appeal was Lane Thibodeaux, Law Office of Lane Thibodeaux, P.O. Box 523, Bryan, Texas 77806.

\* Counsel for the State at trial were Brazos County Assistant District Attorneys Ryan Calvert and Ashley Martin, 300 E. 26<sup>th</sup> St., Suite 310 Bryan, Texas 77803.

\* Counsel for the State before the Court of Appeals were Brazos County Assistant District Attorneys John Brick and Ryan Calvert, 300 E. 26<sup>th</sup> St., Suite 310 Bryan, Texas 77803.

\* Counsel for the State before this Court is Ryan Calvert, Assistant District Attorney, 300 E. 26<sup>th</sup> St., Suite 310, Bryan, Texas 77803.

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**STATE'S RESPONSE  
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REVIEW**

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

**RESPONSE TO APPELLANT'S REPLY AND ARGUMENTS**

**In his reply to the State's Petition for Discretionary Review, Appellant relies on factual arguments which are outside the record.**

Appellant makes the following claim in his reply to the State's Petition for Discretionary Review:

The State's Petition points to non-fraternity member exclusion of non-residents at the structure to support their contention in Ground Three that the larger structure was a single dwelling space. This disregards current on and off campus student housing. Whether at a private institution such as Baylor University or public ones like Texas A&M University and the University of Texas, on and off campus residents are issued security cards limiting entrance to the structures where their individual home away from home are located. It also disregards the commonality of residents in student housing situations – honor dorms, or housing allocated to specific majors and student activities – Texas A&M Corps of Cadets – for example.

(Appellant's Reply to State's Petition for Discretionary Review, p. 3-4).

The record contains no evidence whatsoever of any of these assertions made by Appellant. It is a long standing principle that appellate courts cannot review contentions which depend upon factual assertions outside of the record. *Janecka v. State*, 937 S.W.2d 456, 476 (Tex. Crim. App. 1996).

Further, Appellant makes the following claim:

The boilerplate language incorporating the affidavit into the warrant is not evidence that the affidavit was attached to the warrant that was served. Common practice among law enforcement is that it is the issued and signed warrant that is served and returned. Law enforcement officers actually executing the warrant were left with the general description in the warrant itself.

(Appellant's Reply to State's Petition for Discretionary Review, p. 14).

The record does not contain any evidence supporting Appellant's claim that the incorporated affidavit was not actually attached to the warrant at the time the warrant was executed. *See Janecka v. State*, 937 S.W.2d at 476. Nor does the record contain any evidence supporting Appellant's claim describing "common practice among law enforcement" in the execution of search warrants. *Id.* Rather, the record shows that the affidavit was attached to the warrant at the time it was presented for review by the magistrate. (2 RR 226).

**In his reply to the State's Petition for Discretionary Review, Appellant incorrectly suggests that the search warrant affidavit was not sufficiently incorporated into the search warrant.**

Aside from having no factual support in the record, Appellant's argument that the affidavit might not have been attached to the warrant at the time of the warrant's execution is also legally irrelevant. Texas appellate courts have already expressly rejected the argument that failing to attach an incorporated affidavit invalidates the affidavit's incorporation into a warrant. A search warrant is still valid, and an affidavit is still incorporated, even if the affidavit is not actually attached when the warrant is executed. *Turner v. State*, 886 S.W.2d 859, 864 (Tex. App. – Beaumont 1994, pet. ref'd). A failure to attach an incorporated affidavit is merely a ministerial violation, not requiring suppression of evidence. *Id.* at 865.

In *Baker v. State*, the defendant argued that a warrant failed to properly incorporate an affidavit when the affidavit was not attached to the warrant at the time of execution. No. 06-05-00091-CR, 2006 Tex. App. LEXIS 7430, \*3 (Tex. App. – Texarkana Aug. 23, 2006, no pet.) (not designated for publication). The defendant in *Baker* also contended that the language in the warrant was so vague that no reasonable person would have notice of what affidavit was being incorporated. *Id.* at \*9.

In rejecting Baker's arguments, the Sixth Court of Appeals held that the affidavit was properly incorporated, despite not being attached when the warrant was executed. *Id.* at \*11. The Court noted that the search warrant stated that the

“Affidavit is hereby made part hereof for all purposes as if fully copied herein.” *Id.* at \*10. Additionally, the Court observed that both the warrant and affidavit bore the same judge’s signature, and were signed on the same date. *Id.* Thus, the Court ruled, the affidavit was properly incorporated into the warrant itself. *Id.*

In Appellant’s case, the language incorporating the affidavit into the search warrant was, “...said affidavit is here now made a part hereof for all purposes and incorporated herein as if written verbatim within the confines of this warrant.” (State’s Exhibit 1 – Search Warrant and Affidavit, 6 RR 8). That language is nearly identical to the language discussed in *Baker*. Furthermore, both the affidavit and search warrant in Appellant’s case bear the same judge’s signature, and those signatures were made on the same date. (State’s Exhibit 1 -- Search Warrant and Affidavit, 6 RR 14, 26). Thus, under *Turner* and *Baker*, the affidavit was properly incorporated, regardless of whether it was actually attached at the time of execution. As such, Appellant’s argument is without merit.

Consequently, Appellant’s only remaining argument that the warrant was not particular enough as it pertains to him is based entirely on the premise that his room number, and the description of contraband seen therein, were listed in the wrong portion of the affidavit -- the synopsis of the investigation, rather than under the heading specifically describing the place to be searched. Suppression on such a basis constitutes reading warrants in a “hyper-technical manner” which Texas



courts have consistently rejected. *See Rodriguez v. State*, 232 S.W.3d 55, 59 (Tex. Crim. App. 2007), (stating, “The Supreme Court has repeatedly reminded reviewing courts that they should not invalidate the warrant by interpreting the affidavit in a hyper-technical, rather than a commonsense, manner.”). Despite Appellant’s complaint that “the search warrant gave authority to search all twenty-five units and common areas of the larger structure” (Appellant’s Reply to State’s Petition for Discretionary Review, p. 13), the fact remains that Appellant’s specific room, along with a description of the contraband observed there, were described in the warrant upon incorporation of the search warrant affidavit, thereby satisfying the particularity requirement as it pertains to Appellant. While Appellant’s argument might apply to a defendant whose room was searched pursuant to the search warrant when that room was *not* specifically listed in the warrant and affidavit, those are not the facts of Appellant’s case.

**Appellant’s complaint, that State’s arguments were raised for the first time in a Motion for Rehearing, is legally irrelevant**

Appellant notes that the State did not raise the fact that Appellant’s room was specifically listed in the search warrant affidavit until filing a Motion for Rehearing at the Tenth Court of Appeals. (Appellant’s Reply to State’s Petition for Discretionary Review, pp. 4-5). However, a trial court’s ruling on a motion to suppress must be upheld if it is correct under any theory of law applicable to the case, regardless of whether the trial court based its ruling on that theory. *State v.*

*Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014). An appellate court may affirm a trial court's decision on a legal theory not presented to the trial court because the ordinary notions of procedural default do not require a prevailing party to list or verbalize in the trial court every possible basis for upholding its decision. *Hailey v. State*, 87 S.W.3d 118, 121-22 (Tex. Crim. App. 2002) (citing *State v. Mercado*, 972 S.W.2d 75, 77-78 (Tex. Crim. App. 1998)); *State v. Huddleston*, 164 S.W.3d 711, 716 (Tex. App. -- Austin 2005, no pet.); *State v. Elrod*, 395 S.W.3d 869, 880 (Tex. App. -- Austin 2013, no pet.).

### **PRAYER**

Wherefore, the State of Texas prays that the Court of Criminal Appeals grant the State's Petition for Discretionary Review, that this case be set for submission, and that after submission, this Court reverse the judgment of the Tenth Court of Appeals.

Respectfully submitted,

JARVIS PARSONS  
DISTRICT ATTORNEY  
BRAZOS COUNTY, TEXAS



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Ryan Calvert  
Assistant District Attorney  
State Bar No. 24036308

**CERTIFICATE OF COMPLIANCE WITH TEX. R. APP. P. 9.4**

I do hereby certify that the foregoing document has a word count of 1,885 based on the word count program in Word 2013.



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Ryan Calvert  
Assistant District Attorney

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the above and foregoing State's Petition for Discretionary Review was emailed Lane Thibodeaux, Attorney for Appellant, at [lanet1@msn.com](mailto:lanet1@msn.com), and to the State Prosecuting Attorney at [information@spa.texas.gov](mailto:information@spa.texas.gov) on this 15th day of June, 2021.



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Ryan Calvert  
Assistant District Attorney

### **Automated Certificate of eService**

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